HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 153 OF 2003

Vijay Ramchandra Pilankar. ..Petitioner.

Versus.

1.Nagesh Dasharath Kalsekar & Anr...Respondents.

Mr. S.A.Sawant, advocate for Petitioner for the applicants.

Mrs. S.A.Mudbidri, advocate for respondent.

Mr. A.S.Shitole, APP for the State.

CORAM: V.M.KANADE,J

DATE: MARCH 16, 2005.

P.C.

1. Heard the learned counsel for the petitioner and respondent No.1 and learned APP for the State.

2. The petitioner takes an exception to the order passed by the Magistrate, whereby he has refused to issue process on the complaint filed by the petitioner. Against this order, petitioner had preferred Revision Application in the Sessions Court which was also rejected. The learned counsel for the petitioner submits that the respondents had committed criminal tress-pass on his property and had demolished his stall and had also assaulted him. The

complaint was filed in the Court of the Judicial Magistrate First Class, Kankavli. The learned Magistrate passed an order directing the police to investigate into the matter by exercising his power under section 166B of the Cr.P.Code. The report was submitted by the police that no offence was made out. Thereafter, the learned Magistrate after considering complaint and other material which were available on record came to the conclusion that prima facie, no case was made out to issue process against the accused. This order was confirmed by the Sessions Court in the Revision. The learned counsel for the petitioner submits that by order dated 4th October, 2004, this Court had directed that the petitioner should ascertain whether in fact Tahasildar has passed an order of demolition of stall. The learned counsel for the petitioner has relied on a fax message sent by the Tahasildar which states that no orders had been issued by the office of the Tahasildar to that effect.

3. He therefore, submits that matter may be remanded back to the Trial Court as the Magistrate had erroneously proceeded on the footing that in pursuance to the directions given by the Tahasildar, the stall was demolished.

4. It was submitted that the Trial Court has also not taken into consideration that apart from demolishing his property, accused had assaulted him. This fact was not considered by the Magistrate. Therefore, he submits that this is a fit case where the orders passed by both the courts below should be set aside and the Magistrate be directed to institute fresh enquiry under Section 156(3) of Cr.P.Code. The learned counsel for the petitioner has also relied in the case of **H.S.Bains V/s. The State(Union Territory of Chandigarh) reported in 1980 Cri. L.J.1308.**

5. I am unable to accept the counsel for the petitioner. I have perused the order passed by the Magistrate and also the report which has been submitted by the police. I have also seen the order passed by the Sessions Court, Sindhudurg. In my view, there is no reason to interfere with the order passed by both the Courts below as they have taken into consideration the statements of the witnesses and other evidence which is available on record and the trial court has come to the conclusion that no case is made out for issuance of process. So far as the Judgment on which reliance is placed by the learned counsel for the petitioner is concerned, there cannot be any dispute regarding ratio laid down by the said case. It is observed by the Supreme Court in the said case that the

Magistrate is empowered to take cognizance and issue process even if an adverse police report is filed. There cannot be any dispute regarding ratio laid down in the said case. In my view, the Trial Court has undisputedly considered the material on record and complaint filed and has come to the conclusion that no prima facie case is made out. The trial Court has also observed that there was no evidence regarding the assault made on the complainant.

6. Apart from that the complainant has already filed Civil Suit which is still pending. There is thus no reason to interfere with the order passed by both the Courts below. Criminal Writ Petition is dismissed accordingly.

7. It is made clear that all the questions which are raised by the petitioner in the Civil Suit are kept open.

(V.M.KANADE,J)